

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JOHN FAURE,)	Case No. EDCV 11-1566-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
)	
Defendant.)	
_____)	

Plaintiff John Faure seeks judicial review of the Commissioner's denial of his application for Supplemental Security Income ("SSI") benefits under the Social Security Act. For the reasons stated below, the decision of the Commissioner is REVERSED and the matter is REMANDED for further proceedings consistent with this opinion.

I. Factual and Procedural History

Plaintiff was born on January 27, 1964. (Administrative Record ("AR") at 48.) He graduated from high school and completed two years of

1 college. (AR at 137.) Plaintiff has work experience as a baker, molder
2 operator and sponge maker. (AR at 133.)

3 Plaintiff filed an application for benefits on May 6, 2008,
4 alleging disability since April 19, 2006, due to disorders of the
5 muscle, ligament and fascia. (AR at 14, 48.) Plaintiff's application was
6 denied initially on July 28, 2008 and upon reconsideration on October
7 16, 2008. (AR at 50-53, 57-61.) An administrative hearing was held on
8 December 9, 2009, before Administrative Law Judge ("ALJ") F. Keith
9 Varni, at which Plaintiff, represented by counsel, testified. (AR at 33-
10 47.)

11 On January 13, 2010, ALJ Varni denied Plaintiff's application for
12 benefits. (AR at 14-26.) The ALJ found that Plaintiff had not engaged in
13 substantial gainful activity since the alleged onset date. (AR at 16.)
14 The ALJ further found that the medical evidence established that
15 Plaintiff suffered from a severe impairment of the musculoskeletal
16 system. (Id.) However, the ALJ concluded that Plaintiff's impairments
17 did not meet, or were not medically equal to, one of the impairments
18 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1. (AR at 18.) The
19 ALJ concluded that Plaintiff retained the residual functional capacity
20 ("RFC") to perform a full range of light work with the following
21 limitations: "The claimant may perform occasional postural activities,
22 but is precluded from climbing ladders, ropes or scaffolds and working
23 on uneven terrain. The claimant is limited to frequent reaching with the
24 left upper extremity." (AR at 18-19.)

25 The ALJ found that Plaintiff was unable to perform his past
26 relevant work as a bakery worker. (AR at 25.) However, relying on the
27 Medical-Vocational Guidelines (the "grids"), the ALJ found that there
28 were jobs that exist in significant numbers in the national economy that

1 Plaintiff could perform (20 C.F.R. 404.1569, 404.1569(a)). (Id.) The ALJ
2 concluded that Plaintiff was therefore not disabled within the meaning
3 of the Social Security Act. (AR at 26.)

4 On July 29, 2011, the Appeals Council denied review (AR at 1-3),
5 and Plaintiff timely commenced this action for judicial review. On April
6 6, 2012, the parties filed a Joint Stipulation ("Joint Stip.") of
7 disputed facts and issues. Plaintiff contends that the ALJ erred by: (1)
8 improperly relying on the grids in concluding that there were a
9 significant number of jobs in the national economy that Plaintiff could
10 perform, and (2) failing to properly consider Plaintiff's subjective
11 pain testimony. (Joint Stip. at 2.) Plaintiff asks the Court to reverse
12 the decision and order an award of benefits, or in the alternative,
13 remand for further administrative proceedings. (Joint Stip. at 16.) The
14 Commissioner requests that the ALJ's decision be affirmed. (Id.)

15 After reviewing the parties' respective contentions and the record
16 as a whole, the Court finds Plaintiff's contention regarding the ALJ's
17 error in relying on the medical-vocational to be meritorious and remands
18 this matter for further proceedings consistent with this opinion.¹

20 **II. Standard of Review**

21 Under 42 U.S.C. § 405(g), a district court may review the Social
22 Security Commissioner's decision to deny benefits. The Court must uphold
23 the Social Security Administration's disability determination unless it
24 is not supported by substantial evidence or is based on legal error.

26 ¹ The Court will only address the ALJ's reliance on the grids in
27 detail. However, as noted above, Plaintiff also contends that the ALJ
28 failed to make proper credibility findings. Because the ALJ erred by
improperly relying on the grids, the Court does not reach this issue and
will not decide whether it would independently warrant relief.

1 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)(citing
2 *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
3 2006)). Substantial evidence means more than a scintilla, but less than
4 a preponderance; it is evidence that "a reasonable person might accept
5 as adequate to support a conclusion." *Lingenfelter v. Astrue*, 504 F.3d
6 1028, 1035 (9th Cir. 2007)(citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d
7 880, 882 (9th Cir. 2006)). To determine whether substantial evidence
8 supports a finding, the reviewing court "must review the administrative
9 record as a whole, weighing both the evidence that supports and the
10 evidence that detracts from the Commissioner's conclusion." *Reddick v.*
11 *Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can support
12 either affirming or reversing the ALJ's conclusion," the reviewing court
13 "may not substitute [its] judgment for that of the ALJ." *Robbins*, 466
14 F.3d at 882.

16 **III. Discussion**

17 Plaintiff contends that the ALJ erred by neglecting to obtain
18 vocational expert testimony on the issue of whether there existed work
19 in the national economy that Plaintiff could perform given his
20 limitations, and instead relying solely on the medical-vocational
21 guidelines. (Joint Stip. at 3.) The Court agrees.

22 Once a claimant has demonstrated the existence of a severe
23 impairment that precludes him from doing past work, the burden shifts to
24 the Commissioner to demonstrate that there are a significant number of
25 jobs in the national economy that the claimant can perform despite his
26 impairment. *Burkhart v. Bowen*, 856 F.2d 1335, 1340 (9th Cir. 1988). The
27 Commissioner may satisfy this burden by: (1) taking the testimony of a
28 vocational expert or (2) applying the grids at 20 C.F.R., Part 404,

1 Subpart P, Appendix 2. *Id.*

2 The grids provide a system "for disposing of cases that involve
3 substantially uniform levels of impairment." *Desrosiers v. Sec'y of*
4 *Health & Human Servs.*, 846 F.2d 573, 578 (9th Cir. 1988) (Pregerson, J.,
5 concurring). The grids categorize jobs by three physical-exertional
6 requirements: "[m]aximum sustained work capacity limited to sedentary
7 work," "[m]aximum sustained work capacity limited to light work," and
8 "[m]aximum sustained work capacity limited to medium work." *Tackett v.*
9 *Apfel*, 180 F.3d 1094, 1101 (9th Cir. 1999). These exertional levels are
10 further divided by a claimant's age, education, and work experience. *Id.*
11 The grids direct a finding of "disabled" or "not disabled" depending on
12 a claimant's particular combination of factors. *Id.*

13 There are "strict limits on when the Secretary may rely on the
14 Guidelines." *Desrosiers*, 846 F.2d at 578 (Pregerson, J., concurring). An
15 ALJ may only substitute the grids for vocational expert testimony when
16 they "completely and accurately represent a claimant's limitations."
17 *Tackett*, 180 F.3d at 1101 (emphasis in original); see also *Holohan v.*
18 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). This means that "a
19 claimant must be able to perform the full range of jobs in a given
20 [exertional] category" for the grids to apply. *Tackett*, 180 F.2d at 1101
21 (emphasis in original); see also *Burkhart*, 856 F.2d at 1340. Because
22 "the grids are predicated on a claimant suffering from an impairment
23 which manifests itself by limitations in meeting the strength
24 requirements of jobs[,] they may not be fully applicable" for a
25 claimant's non-exertional limitations. *Lounsberry v. Barnhart*, 468 F.3d
26 1111, 1115 (9th Cir. 2006). The mere allegation of a nonexertional
27 limitation, however, does not preclude the use of the grids. For the
28 grids to be inadequate, the nonexertional limitation must be

1 "sufficiently severe so as to significantly limit the range of work
2 permitted by the claimant's exertional limitations.'" *Hoopai v. Astrue*,
3 499 F.3d 1071, 1075 (9th Cir. 2007) (quoting *Burkhart*, 856 F.2d at
4 1340); *see also Desrosiers*, 846 F.2d at 577. When "a claimant's
5 nonexertional limitations are in themselves enough to limit his range of
6 work, the grids do not apply, and the testimony of a vocational expert
7 is required to identify specific jobs within the claimant's abilities."
8 *Polny v. Bowen*, 864 F.2d 661, 663-64 (9th Cir. 1988).

9 In the present case, the ALJ concluded that Plaintiff retained the
10 RFC to perform a full range of light work with the limitation "to
11 frequent reaching with the left upper extremity." (AR at 19.) Difficulty
12 in reaching is considered a nonexertional limitation. 20 C.F.R. §
13 416.969a(c). Instead of taking vocational expert testimony, the ALJ
14 merely stated that "the additional limitation on reaching with the left
15 upper extremity has little or no effect on the occupational base of
16 unskilled light work." (AR at 25.) However, contrary to the ALJ's
17 assertion, reaching is "required in almost all jobs," at all exertional
18 levels and "significant" limitations on reaching "may eliminate a large
19 number of occupations a person could otherwise do." SSR 85-15, 1985 WL
20 56857 at *7. Moreover, "varying degrees of limitations [in reaching]
21 would have different effects, and the assistance of a vocational
22 specialist may be needed to determine the effects of the limitations."
23 (Id.)

24 It appears that the grids do not "completely and accurately"
25 describe Plaintiff's nonexertional limitation on reaching, and therefore
26 it was improper for the ALJ to rely on the grids at step five rather
27 than taking vocational expert testimony. *See, e.g., Tackett*, 180 F.3d at
28 1103-04 (vocational expert testimony necessary because claimant's need

1 to shift, stand up, or walk around every thirty minutes is significant
2 nonexertional limitation not contemplated by grids); *Burkhart*, 856 F.2d
3 at 1341 & n.4 (grids inapplicable because they did not account for the
4 claimant's need to avoid stressful environments, his inability to
5 regularly use his hands, or his vision problems).

6 The ALJ did not specifically identify any jobs that Plaintiff was
7 capable of performing given his nonexertional limitation. This was
8 insufficient to meet the Commissioner's burden at step five. The ALJ
9 should have had a vocational expert testify as to whether there were
10 jobs in the national economy that Plaintiff could perform despite his
11 specific nonexertional limitation. Accordingly, the matter shall be
12 remanded for that purpose.

13
14 **IV. Conclusion**

15 For the reasons stated above, the decision of the Social Security
16 Commissioner is REVERSED and REMANDED for further proceedings consistent
17 with this opinion.

18
19 DATED: April 16, 2012

20
21
22 

23 MARC L. GOLDMAN
24 United States Magistrate Judge
25
26
27
28